81-1030

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OCT 16 1981
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No. A-78

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EDWARD LEROY LECK, *Petitioner*

vs.

KENNETH PUGH and CLEBURNE NATIONAL BANK, *Respondents*

On Writ of Certiorari to the Supreme Court of Texas

Brief in Opposition for Respondent Cleburne National Bank

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Cleburne National Bank respectfully submits this brief opposing the Petition for Writ of Certiorari.*

STATEMENT OF THE CASE

The case is fully and adequately stated in the opinion of the Texas Court of Civil Appeals appearing at pages A-2 through A-9 of the Petition.

SUMMARY OF THE ARGUMENT

The case involves solely questions of state law and no federal question is presented.

*Respondent has no subsidiary. Its parent is First United Bancorporation, Inc., Fort Worth, Texas. Its only affiliates, all in Texas, are: The First National Bank of Fort Worth, University Bank, Gateway National Bank, Security State Bank, Seminary State Bank, Texas Credit Life Insurance Company, Tarrant Investment Company, and First United Services, Inc., all in Fort Worth; Metroplex National Bank and First United Bank — Arlington, N.A., both in Arlington; First United Bank — Richland, N.A., Las Colinas National Bank of Irving, Farmers — First National Bank of Stephenville, Citizens National Bank of Temple, State National Bank of Odessa and Southwest State Bank of Brownwood.

ARGUMENT

The Petition is facially insufficient to show any reason to invoke the Court's discretionary review on any ground within the letter or spirit of Rule 17. It contains not the slightest intimation that the Texas court has decided any federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals; or that the Texas court has decided any question of federal law at all, let alone an important one.

The effort to concoct Constitutional issues from mundane questions of state law is as transparent as it is groundless. The opinion and holding below stand for nothing more than the following:

1. A bank (such as respondent) financing the inventory of a corporation, absent some contract to the contrary, owes no duty to the corporation to "administer" the inventory not in the bank's possession and in any event owes no duty whatever to a shareholder of the corporation with respect to inventory owned by the corporation. If there were any damage resulting from any act of the bank with respect to the inventory, the cause of action belongs to the corporation and not to the shareholder.*

2. A shareholder (such as petitioner) who has sought and been denied recovery in a former suit for alleged damages resulting from supposed improper activities by a financing bank with respect to inventory owned by the corporation, cannot relitigate that issue in a subsequent suit asserting different kinds of damages arising from the same activities with respect to the same inventory at the same time.

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*Here the "floor plan" bank arrangements were not with petitioner as misstated on page 3 of the Petition but were with the corporation.

CONCLUSION

The Petition is frivolous and should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that three copies of the foregoing Brief in Opposition for Respondent Cleburne National Bank have been served upon Mr. Robert J. Wilson, P.O. Drawer 325, Burleson, Texas 76028, counsel of record for petitioner, and upon Mr. Robert A. Sparks, P.O. Box 626, Cleburne, Texas 76031, counsel of record for respondent Kenneth Pugh, who are all the parties required to be served, by depositing same in a United States mailbox with first class postage, prepaid, addressed to them at their respective post office addresses shown above this 15th day of October, 1981.

SLOAN B. BLAIR
Counsel of Record for Respondent Cleburne National Bank